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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Santa Clara)

In re the Marriage of KAMAL and ADIL
HIRAMANEK.

C082930

KAMAL HIRAMANEK,

Respondent,

(Super. Ct. No. 1-09-FL-
149682)

v.

ADIL HIRAMANEK,

Respondent;

RODA HIRAMANEK

Appellant.

After Roda HiramaneK (mother) relinquished her interest in a family residence to her son Adil HiramaneK (husband) and her daughter-in-law Kamal HiramaneK (wife), wife filed a petition to dissolve the marriage. Mother decided she wanted her interest in

the family residence back and filed a complaint in intervention in the dissolution action, seeking rescission of her relinquishment. After a court trial, the trial court denied the relief sought by mother.

Mother now contends the trial court's order denying relief on the complaint in intervention must be reversed. She makes 527 assignments of error. We conclude mother has forfeited appellate review of each and every assignment of error because she fails to properly identify and organize her contentions under appropriate headings and support her contentions with relevant legal analysis, ignores the factual findings of the trial court and recounts only facts favorable to her, and fails to make a coherent presentation of prejudice resulting from the asserted errors. We also deny mother's pending requests for judicial notice and motion to augment, and an accompanying request to file documents under seal.

In his respondent's brief, husband also asserts contentions of error in support of reversing the trial court's order denying relief to mother on her complaint in intervention. We conclude husband cannot raise contentions supporting reversal of the order because he did not appeal.

We will affirm the trial court's order denying relief on mother's complaint in intervention.

BACKGROUND

This appeal is taken from the trial court's denial of relief on mother's first amended complaint in intervention in the dissolution action. The trial court order was dated February 14, 2012. We recount the facts and procedure leading up to the order as well as the details of the order.

This matter is collateral to the dissolution action. The order is appealable because it disposes of issues related to mother in the dissolution action. (See *In re Marriage of Skelley* (1976) 18 Cal.3d 365, 368 [orders on collateral matters in a dissolution action are appealable]; *Henneberque v. City of Culver City* (1985) 172 Cal.App.3d 837, 841 [a

collateral order is appealable when it disposes of issues and is substantially the same as a final judgment].)

Husband and wife married in 1998, and wife filed a petition for dissolution in 2007. Because mother was involved in finances related to the marriage, the trial court froze several of her accounts.

On July 10, 2008, mother, husband, and wife signed a stipulation leading to a reconciliation of the marriage. Under the stipulation, wife agreed to dismiss the dissolution action. Mother agreed to relinquish any claims she had on the family residence, leaving husband and wife as the owners of the property. However, the stipulation provided, among other things, that mother could visit or reside at the residence if husband so desired. In exchange for mother's relinquishment of an interest in the family residence, wife agreed to relinquish any claim she had to mother's assets in specified accounts.

At a hearing to make the stipulation an order of the court, the trial court asked husband to translate for mother, whose native language is Gujarati. The trial court conducted a voir dire examination concerning the stipulation. From the parties' answers, the trial court determined that the initials and signatures on the stipulation were genuine and that it was signed freely and voluntarily. The trial court therefore adopted the stipulation as a court order in the dissolution action.

Based on the stipulation, the trial court dismissed the dissolution action. However, on March 6, 2009, eight months after signing the stipulation, wife filed a second petition for dissolution. Husband attempted to have the stipulation set aside in the second dissolution action, but the trial court denied his motion. Wife continued to reside at the residence and husband was ordered to stay away.

Mother filed a civil complaint against wife and wife's mother, Perviz Kapadia, seeking to set aside the stipulation. The trial court sustained a demurrer on the complaint, ruling that because the stipulation became an order of the dissolution action, the

appropriate forum was the family law division of the superior court. The trial court subsequently granted mother's request for joinder in the dissolution action.

On August 1, 2011, mother filed a first amended complaint in intervention, the operative pleading relevant to this appeal, in the dissolution action. She requested equitable relief, declaratory relief, rescission and damages for breach of contract, and rescission and damages for deceit. Mother requested a declaration that she is the "100% equitable owner" of the residence.

Husband answered the complaint, stating that although he did not admit all the allegations, he did not contest mother's requests for relief. Wife also answered the complaint, denying most of the substantive allegations.

The trial court took evidence, issued a tentative statement of decision, heard argument, and ultimately issued a final statement of decision denying mother's requested relief. The trial court determined mother's complaint in intervention was the proper method to seek rescission of the stipulation, mother was not entitled to a jury trial because the stipulation had been reduced to a court order, and the trial court had inherent authority to determine whether mother was entitled to rescind the stipulation.

The trial court also made the following factual findings relating to mother's requests for relief:

1. Wife and wife's mother did not pressure mother to sign the stipulation.
2. Mother's free will was not overcome by any specific wrongful act or threat.
3. Mother's shifting statements regarding whether she read the stipulation before signing it rendered her testimony not credible.

4. Mother's claims that she did not understand English also were not credible.

According to the trial court, "[mother] testified without the help of an interpreter at trial, and the Court finds that she has a strong command of the English language and was able to testify thoroughly and competently."

5. Mother not only signed the stipulation but also acknowledged her agreement to it in open court.

6. Wife took good-faith steps to reconcile with husband after signing the stipulation.

7. Wife intended to comply with the stipulation when she signed it.

8. Wife filed the second petition for dissolution because she perceived that husband's behavior was abusive.

9. The prospect of another dissolution proceeding was not unforeseeable when the stipulation was signed.

10. Mother had the capacity to enter into the stipulation.

11. Mother did not sign the stipulation under duress, by mistake, or because of undue influence.

12. Mother received consideration for her relinquishment of any and all claims on the residence.

13. Husband and wife did not fail to perform under the stipulation.

14. There was no deceit, misrepresentation, fraud, or fraudulent concealment of facts by any party in signing the stipulation.

In addition, the trial court made the following legal determinations:

1. Although the stipulation authorized mother to visit or reside at the residence if husband desired, and there is no longer such an opportunity in light of the dissolution, the equities nevertheless do not support rescission of the stipulation.

2. Applying principles of contract interpretation and considering the mutual intention of the parties, the stipulation did not give mother the right to visit or reside at the residence in the event of dissolution of the marriage.

3. The stipulation did not give mother a property right in the residence. It authorized mother to visit or reside at the residence if husband desired, but only if the couple lived together as a family.

4. By signing the stipulation, mother relinquished any and all claims she may have had to the residence.

Based on those findings and legal determinations, the trial court denied equitable relief, declaratory relief, remedies for breach of contract, and remedies for deceit.

Mother appeals the order denying relief on her complaint in intervention. She is not represented by counsel on appeal, and it appears husband wrote her opening and reply briefs, which she signed. Husband also filed a respondent's brief in which he agrees with mother's claims of error and request for reversal. Wife did not file a brief in this appeal.

DISCUSSION

When litigants represent themselves and do not retain counsel, they are "entitled to the same, but no greater, consideration than other litigants and attorneys. [Citations.] Further, the in propria persona litigant is held to the same restrictive rules of procedure as an attorney." (*Nelson v. Gaunt* (1981) 125 Cal.App.3d 623, 638-639, questioned on another ground in *Dumas v. Stocker* (1989) 213 Cal.App.3d 1262, 1268, fn. 13.)

A

Mother's opening brief on appeal purports to raise 527 claims of identified errors. But the manner in which they are raised is not consistent with the rules for appellate briefing.

Points raised in the opening brief must be set forth separately under an appropriate heading, showing the nature of the question to be presented and the point to be made. (Cal. Rules of Court, rule 8.204(a)(1)(B); *Opdyk v. California Horse Racing Bd.* (1995) 34 Cal.App.4th 1826, 1830, fn. 4.) "This is not a mere technical requirement; it is 'designed to lighten the labors of the appellate tribunals by requiring the litigants to present their cause systematically and so arranged that those upon whom the duty devolves of ascertaining the rule of law to apply may be advised, as they read, of the exact question under consideration, instead of being compelled to extricate it from the mass.' (*Landa v. Steinberg* (1932) 126 Cal.App. 324, 325 . . .)" (*In re S.C.* (2006)

138 Cal.App.4th 396, 408.) The heading is not merely an outline label, but must constitute a contention of legal error. Failure to set forth arguments under an appropriate heading forfeits consideration of the issue on appeal. (*Opdyk*, at p. 1830, fn. 4.)

To demonstrate error and obtain reversal, the appellant must not only present an intelligible factual analysis and legal authority on each point made, but also support any argument with appropriate citations to the material facts in the record; otherwise, the argument may be deemed forfeited. (Cal. Rules of Court, rule 8.204(a)(1)(C); *Duarte v. Chino Community Hospital* (1999) 72 Cal.App.4th 849, 856; *Landry v. Berryessa Union School Dist.* (1995) 39 Cal.App.4th 691, 699-700.)

This court is not obligated to perform these functions on an appellant's behalf. (*Estate of Hoffman* (1963) 213 Cal.App.2d 635, 639; *Metzenbaum v. Metzenbaum* (1950) 96 Cal.App.2d 197, 199.) This is so because it is not the province of an appellate court to act as counsel for either party to an appeal by undertaking a search of the record for the purpose of discovering error or grounds for appeal not pointed out in the briefs or buried in an incoherent brief. (*Fox v. Erickson* (1950) 99 Cal.App.2d 740, 742.)

Mother presents no heading setting forth a contention of legal error. She fails to organize her opening brief into contentions of cognizable assertions of error. For this reason, mother has forfeited consideration of her contentions on appeal.

In addition, to properly raise a cognizable argument on appeal, the appellant must cite to authority, whether statutory or precedential, that supports the argument. (*People v. Gidney* (1937) 10 Cal.2d 138, 142-143.) It is not enough to merely disagree with the trial court; the appellant must establish that the trial court's order was erroneous under applicable laws. Failure to cite any laws at all with respect to an aspect of the trial court order is therefore a forfeiture of the argument that the order must be reversed. Mother identifies purported errors in her opening brief, but she gives little legal authority for her assertions. When she cites legal authority, she does not relate it to the facts of this case as

decided by the trial court. Again, this practice forfeits consideration of the issues on appeal. (*Ibid.*)

The most glaring deficiency in mother's brief is that she never sets forth plainly how the trial court's order was unsupported by the facts and contrary to law. Because we reverse only on a properly-made showing of prejudicial error, this deficiency, by itself, is also sufficient to affirm the order.

B

When we review a trial court's order, we presume the factual findings are correct. To overcome that presumption, the appellant must show that the disputed factual finding was in error considering *all* material evidence. "The appellant's brief must set forth all of the material evidence bearing on the issue, not merely the evidence favorable to the appellant, and it also must show how the evidence does not sustain the challenged finding. [Citations.] And the appellant must support all of its factual assertions with citations to evidence in the appellate record. [Citations.] If the appellant fails to set forth all of the material evidence, its claim of insufficiency of the evidence is waived. [Citations.]" (*Baxter Healthcare Corp. v. Denton* (2004) 120 Cal.App.4th 333, 368.)

Mother's brief fails to set forth all material evidence bearing on the issues decided by the trial court. Instead, it sets forth only the evidence favorable to mother. This circumstance effectively prevents this court from considering any of mother's legal arguments because her legal arguments are based on a version of the facts that is inconsistent with the trial court's factual findings. For this reason, as well as others noted, she forfeited consideration of all of her contentions on appeal.

For example, mother appears to contend that the stipulation was unenforceable because of duress, mistake, and "unanticipated change of circumstances." She cites some legal authorities concerning duress and mistake, but she completely ignores the trial court's factual findings and does not explain how the trial court's order is contrary to the

legal authorities under the facts found by the trial court. Instead, she recounts only the evidence she perceives as favorable to her argument.

Another example is mother's assertion that consideration did not support her relinquishment of interest in the residence. The trial court found to the contrary. The trial court's statement of decision notes that several of mother's financial accounts were frozen by court order in the dissolution action. As part of the stipulation, wife agreed to waive any claims she had on those financial accounts. The trial court held: "At a minimum, [mother] received a waiver of all present and future claims against her by [wife] and [wife's mother]" Yet mother does not acknowledge this consideration; instead, she argues there was no consideration and presents the evidence as if wife did not waive her claims against mother's financial accounts. This strategy does not work on appeal because we presume the trial court's order was correct unless it is shown, considering all material evidence, that the trial court was wrong. Failure to acknowledge the trial court's order precludes overcoming the presumption of correctness.

Mother also makes unsupported factual allegations. An example of this is her practice of quoting a legal authority's summary of facts or discussion of law and substituting her own name or wife's name for the name of a party in the legal authority. This is no substitute for proper citation to the record.

Mother cites her own testimony on many points without acknowledging that the trial court found her testimony was not credible. We must defer to trial court credibility determinations. (*People v. Duncan* (2008) 160 Cal.App.4th 1014, 1018.)

C

Mother suggests we must reverse the trial court order because husband, as a respondent, agrees with mother's arguments, and wife has not filed a brief on appeal. The suggestion is not well taken because we are constitutionally prohibited from reversing the trial court's order unless we find prejudicial error. Wife does not have the burden to establish that the trial court's order is correct; instead, mother has the burden to

establish that the trial court's order is incorrect and constitutes a miscarriage of justice. Because mother has not carried her burden, we must affirm the trial court's order.

By constitutional mandate, we cannot reverse a judgment or order of the trial court unless, based on "an examination of the entire cause, including the evidence," we are "of the opinion that the error complained of has resulted in a miscarriage of justice." (Cal. Const., art. VI, § 13.) "A miscarriage of justice occurs when it appears that a result more favorable to the appealing party would have been reached in the absence of the alleged errors. [Citations.] The burden is on the appellant in every case to show that error has resulted in a miscarriage of justice. [Citation.] Further, 'appellant bears the duty of spelling out in his brief exactly how the error caused a miscarriage of justice.' " (*County of Los Angeles v. Nobel Ins. Co.* (2000) 84 Cal.App.4th 939, 945.)

Our review in this case is solely of the trial court's order denying relief on mother's complaint in intervention. To obtain reversal, it is mother's burden to show that the trial court made an error that affected the result. This appellate court has no duty to guess or speculate concerning how mother's assignments of error were prejudicial. (*Paterno v. State of California* (1999) 74 Cal.App.4th 68, 106.)

Mother argues her asserted errors affected the outcome of the case resulting in a miscarriage of justice. But her general allegation of prejudice is not the type of specific showing required by the constitution. She provides numerous pages of asserted factual matter, but she fails to explain how the law requires a different result under her rendition of the facts. She also fails to acknowledge the fact-finding function of the trial court. Simply disagreeing with the trial court's findings of fact is insufficient. An appellant must establish that the trial court's factual finding is in error and that the error affected the result.

For example, mother states: "Order ignores [mother] true [residence] owner." She labels this statement as "ERROR.#001.Factual." While she cites to parts of the record, which she asserts show mother's ownership interest, she fails to explain why this

represents an error on the trial court's part, given the trial court's conclusion to the contrary, and how the asserted error affected the result. In the stipulation, mother agreed to relinquish any interest she had in the residence. Therefore, the fact that she had an ownership interest in the property before relinquishing it to husband and wife as part of the stipulation is unremarkable. Mother's briefing does not establish trial court error in this regard, and it makes no attempt to show prejudice.

D

Mother filed a request for judicial notice or record augmentation on November 27, 2017 and a request for judicial notice on May 10, 2018. She requests judicial notice of, or augmentation of, the record on appeal with (1) an order made in the dissolution action as to husband and wife with respect to tax liability and their children's assets, (2) newspaper editorials concerning the recall of Judge Aaron Persky, (3) a responsive declaration filed by wife on the issue of child visitation, (4) wife's statement requesting relief from default in a civil case filed against her by husband, (5) a letter to mother apparently denying an application for residency, and (6) a medical report concerning mother. Because the materials attached to the requests for judicial notice and motions to augment the record do not pertain to the issues that can be raised on appeal from the denial of mother's complaint in intervention, we deny the requests and motion. (*Mangini v. R. J. Reynolds Tobacco Co.* (1994) 7 Cal.4th 1057, 1063 [judicial notice granted only if relevant to the limited legal issue at hand], overruled on another ground in *In re Tobacco Cases II* (2007) 41 Cal.4th 1257, 1276; *Mission Beverage Co. v. Pabst Brewing Co., LLC* (2017) 15 Cal.App.5th 686, 696, fn. 4 [denial of motion to augment record with material not relevant to resolution of issues on appeal].)

In connection with two of the documents in the request for judicial notice and motion to augment, mother filed a request to file the unredacted documents under seal. That request is denied and the clerk is directed to return the unredacted documents to mother. (Cal. Rules of Court, rule 8.46(d).)

E

In his respondent's brief, husband "endorses" mother's opening brief and argues additional reasons to reverse the trial court's order denying relief on mother's complaint in intervention. As a respondent, husband cannot assert grounds for reversing the trial court's order. "As a general matter, ' "a respondent who has not appealed from the judgment may not urge error on appeal." ' (*Estate of Powell* (2000) 83 Cal.App.4th 1434, 1439.) 'To obtain affirmative relief by way of appeal, respondents must themselves file a notice of appeal and become cross-appellants.' (Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2015) ¶ 8:195, p. 8-155.)" (*Preserve Poway v. City of Poway* (2016) 245 Cal.App.4th 560, 585.) Because husband did not file a notice of appeal, his contentions in the respondent's brief that the trial court erred are not cognizable on appeal.

DISPOSITION

The order denying relief on the complaint in intervention is affirmed. The parties will bear their own costs on appeal. (Cal. Rules of Court, rule 8.278(a)(5).)

/S/
MAURO, J.

We concur:

/S/
RAYE, P. J.

/S/
BUTZ, J.